

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

ORDER ADOPTING REPORT AND RECOMMENDATION

Petitioner filed the present action pursuant to 28 U.S.C. § 2254 challenging the constitutionality of his state court convictions. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Bernard M. Jones, who entered a Report and Recommendation (“R&R”) on January 13, 2017, recommending the Petition be denied. Petitioner has timely objected. Petitioner also seeks leave to amend his Petition.

The substantive facts and law are accurately set out in Judge Jones' R&R and there is no purpose to be served in repeating them yet again. As Judge Jones noted, Petitioner has failed to demonstrate and cannot demonstrate that the matters he challenges in this habeas action were decided in a manner that was contrary to or an unreasonable application of Supreme Court law. Accordingly, habeas relief is not warranted.

To the extent Petitioner seeks leave to amend, the Court finds the amendments sought by Petitioner would be futile. Each of the proposed amendments is either subsumed within the discussion and analysis in the R&R or raises an entirely new issue.

Any new issue would constitute a second or successive petition. The Court is without jurisdiction to consider a second or successive petition absent authorization from the Tenth Circuit. See 28 U.S.C. § 2244(b)(3)(A). Consequently, the amended § 2254 requested by Petitioner would necessarily be dismissed for lack of jurisdiction. Thus, the proposed amendment is futile.

As set forth more fully herein, the Court adopts, in full, the Report and Recommendation of the Magistrate Judge (Dkt. No. 48). Petitioner’s “Motion for Leave to Proceed to File an Amended or Supplemental Habeas Corpus Writ Petition” (Dkt. No. 54) is DENIED. A separate judgment will issue.

IT IS SO ORDERED this 22nd day of March, 2017.



ROBIN J. CAUTHRON
United States District Judge